

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: )  
 ) CA No. 01-12257-PBS  
PHARMACEUTICAL INDUSTRY AVERAGE ) CA No. 08-11200-PBS  
WHOLESALE PRICE LITIGATION ) CA No. 10-11186-PBS  
 ) Pages 1 - 20

**EVIDENTIARY HEARING**

BEFORE THE HONORABLE PATTI B. SARIS  
CHIEF JUDGE OF THE UNITED STATES DISTRICT JUDGE

United States District Court  
1 Courthouse Way, Courtroom 19  
Boston, Massachusetts 02210  
March 18, 2013, 10:10 a.m.

LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617) 345-6787

1 A P P E A R A N C E S (In Court):

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3 One Beacon Street, 33rd Floor, Boston, Massachusetts, 02108,  
for Baxter International, Inc.

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A P P E A R A N C E S (By Telephone):

5

6 DAVID J. CHIZEWER, ESQ., Goldberg Kohn, Ltd.,  
55 East Monroe Street, Suite 3300, Chicago, Illinois, 60603,  
for Sun and Hamilton.

7

8 FREDERICK M. MORGAN, JR., ESQ., Morgan Verkamp, LLC,  
700 Walnut Street, Suite 400, Cincinnati, Ohio, 45202, for  
Sun and Hamilton.

9

10 JAMES J. BREEN, ESQ., The Breen Law Firm,  
3562 Old Milton Parkway, Alpharetta, Georgia, 30005,  
for Ven-A-Care of the Florida Keys.

11

12 C. JARRETT ANDERSON, ESQ., Anderson, LLC,  
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of the Florida Keys.

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14 J. ANDREW JACKSON, ESQ. and MERLE M. DeLANCY, JR., ESQ.,  
Dickstein Shapiro, LLP, 1825 Eye Street, N.W., Washington,  
D.C., 20006-5403, for Baxter International, Inc.

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1                                    P R O C E E D I N G S

2                    THE CLERK:    Could counsel please identify themselves.  
3    The Court calls Civil Action 01-12257, Citizens v. Abbott.

4                    MR. GELHAAR:    Pete Gelhaar for Baxter.

5                    THE COURT:    All right, who else is on the phone,  
6    please?

7                    MR. BREEN:    This is Jim Breen for Ven-A-Care of the  
8    Florida Keys, and on a separate line is my co-counsel, Jarrett  
9    Anderson.

10                  MR. CHIZEWER:    Your Honor, this is David Chizewer on  
11    behalf of the Sun/Hamilton relators, and also on the line for  
12    the Sun/Hamilton relators is Rick Morgan.

13                  THE COURT:    All right, thank you.

14                  MR. JACKSON:    Good morning, your Honor.    It's Andy  
15    Jackson and Merle DeLancey on behalf of Baxter.

16                  THE COURT:    Anyone else?    We have a pretty empty  
17    courtroom here other than Mr. Gelhaar sitting front and center.  
18    So I'm used to seeing the phalanxes come to me with these drug  
19    cases.

20                  I think you are either the last or the second-to-last  
21    of my AWP cases, and I am quite eager to finish it after more  
22    than a decade.    We are up at, I think, twelve years.    So I was  
23    disappointed when I saw the motion to continue and was inclined  
24    to deny it, but then there was a second motion that had to do  
25    with the medical situation of Mr. Hamilton, and, of course, I

1 don't want someone to have to come here if he's medically  
2 unable.

3 So let me understand what was going to be at this  
4 hearing. I'm willing to do a paper record if there are no  
5 credibility disputes or if there are no fact disputes, but I  
6 don't want to go through reams and reams of papers only to then  
7 decide I need an evidentiary hearing. So can I start with the  
8 relators. Would it be correct to say -- this is the  
9 first-to-file issue -- that you bear the burden of proof on it?

10 MR. BREEN: Your Honor, this is Breen. I'm having a  
11 difficult time hearing you at the end there.

12 THE COURT: I'm sorry. Let me speak -- I don't want  
13 to blast people's ears out is part of my problem. Let me keep  
14 speaking until it's uncomfortable for.

15 You. Would it be fair to say that the relator, here  
16 Sun/Hamilton, bears the burden of proving the first-to-file  
17 issue, which is a matter of subject matter jurisdiction?

18 MR. BREEN: This is Breen. Absolutely, your Honor,  
19 from Ven-A-Care's perspective.

20 THE COURT: Sun/Hamilton agrees, right?

21 MR. CHIZEWER: Your Honor, certainly the general rule  
22 is that in a first-to-file issue, the party asserting that  
23 they're first to file has the burden of proof.

24 THE COURT: Okay. Now, what do I do if there's a  
25 disputed issue of fact on a paper record? Do I have to hold

1 the evidentiary hearing after this all --

2 MR. CHIZEWER: I think what the parties, your Honor,  
3 did by submitting the joint motion was waive the opportunity to  
4 present an evidentiary hearing and have you decide that the  
5 issues on the first-to-file issue could be decided on the  
6 papers.

7 THE COURT: Well, are there --

8 MR. CHIZEWER: If after reviewing the papers that, you  
9 know, a decision couldn't be reached, certainly we would be  
10 amenable to doing an evidentiary hearing; and if your Honor  
11 prefers an evidentiary hearing instead of having the papers,  
12 the Sun/Hamilton relators are happy to proceed that way.

13 THE COURT: But help me on it because let me just say,  
14 it's easy for you all to say, but then I lose yet another law  
15 clerk who knows anything about it, and we're on year 14 of law  
16 clerks. At some point, that's why we set it for now, so it  
17 would be finished within the clerkship year. That sounds  
18 probably trite to all of you, but it's a big deal. This is a  
19 complicated, complicated issue. So I was inclined -- let me  
20 start off with Sun/Hamilton. What do you think the evidence is  
21 going to show by a preponderance of the evidence?

22 MR. CHIZEWER: I'm sorry, Judge, this is David  
23 Chizewer, and I was having a little bit trouble hearing. Did  
24 you say, what do we think the evidence is going to show?

25 THE COURT: What are you going to prove by a

1     preponderance of the evidence? What are you going to show?  
2     And then I'm going to ask the other side what is disputed,  
3     because if it's just a question of credibility, I need to see  
4     live bodies.

5             MR. CHIZEWER: I think we're going to show a few  
6     things, your Honor. We're going to show that there was, as  
7     between Advate and Recombinate, there was a difference in the  
8     way that Advate was priced and marketed as compared to  
9     Recombine. And then we are also going to show that by the  
10    time Advate hit the market, the particular fraudulent reporting  
11    scheme that was in place by Baxter was a very different scheme  
12    than the scheme that had been alleged, you know, approximately  
13    five to six years earlier by Ven-A-Care. And as those two  
14    factual matters combine with what we believe the first-to-file  
15    law is announced by the First Circuit in *Duxbury*, we believe  
16    we'll be able to show that the Sun/Hamilton relators were first  
17    to file.

18            THE COURT: So the argument is that it was a different  
19    fraudulent scheme as opposed to a different drug?

20            MR. CHIZEWER: Correct.

21            THE COURT: All right, so essentially scientifically,  
22    if you will, Advate and Recombinate are substantially the same  
23    drug, but they were marketed -- the fraudulent scheme was  
24    substantially different. That's your position?

25            MR. CHIZEWER: I think I heard your Honor say they

1     were substantially the same drug. I mean, certainly we agree  
2     that the drug was marketed to the same patients for the same  
3     purpose by the same Baxter division. We agree to that, but we  
4     do believe that because of the nature of Advate as compared to  
5     Recombinate, that it was thought of to be a new sort of  
6     blockbuster, you know, once-in-a-lifetime kind of drug; and  
7     because of that, we think we'll be able to show that it was  
8     marketed differently and priced differently. That's one thing.  
9     But then perhaps even more importantly, that by the time Baxter  
10    hit the market, the false price reporting was of a different  
11    nature than alleged by Ven-A-Care. Obviously that's all  
12    disputed.

13               THE COURT: Well, so how am I -- so tell me -- so I'm  
14    just trying to get this in. So that as I understand it,  
15    they're waiving or at least conceding the Recombinate point  
16    from Sun/Hamilton. Is that right?

17               MR. CHIZEWER: Judge, this is Mr. Chizewer again. I'm  
18    sorry, I had trouble understanding that.

19               THE COURT: I'm sorry. As I understand it, there was  
20    a little bit of a fuzziness about Recombinate as to whether or  
21    not you were waiving it or whether I was simply going to rule  
22    against you because it was in the Ven-A-Care complaint. Are  
23    you at this point conceding the Recombinate point?

24               MR. CHIZEWER: Your Honor, we were not conceding that,  
25    although we did hear you loud and clear at our last hearing

1     that you had issued a ruling sort of, I guess, from the bench  
2     on the Recombinate issue; and it was our understanding that  
3     your Honor's ruling was that the Sun/Hamilton relators were not  
4     first to file on Recombinate. And while we respectfully  
5     disagree, we certainly heard the ruling loud and clear on that  
6     issue. So I don't think it would be fair to say we conceded  
7     it, but it would be fair to say that we understood we had been  
8     overruled on it.

9             THE COURT: Okay, so the hearing was just going to be  
10    on Advate, just to refresh my recollection?

11            MR. CHIZEWER: Yes, your Honor.

12            THE COURT: Okay. Now, from the defense point of view  
13    or from Ven-A-Care's point, what would be the disputed facts  
14    based on what was just said for the Sun/Hamilton side?

15            MR. JACKSON: Judge, this is Andy Jackson for Baxter.  
16    The Baxter representative was deposed in and around the factors  
17    described in *Duxbury*, in your prior decision in the *Abbott*  
18    case, and in the probably five first-to-file decisions out of  
19    your court filed in the last two years, and I think those facts  
20    will be undisputed. The drug is nearly identical to  
21    Recombinate, sold to the same patients for the same purposes,  
22    for the same disease state, by the same Baxter entity, by the  
23    same Baxter sales force. We think on all of those factors that  
24    we should win on first to file. The only thing I heard from  
25    Mr. Chizewer just now is, they are going to argue that this is



1 a different theory, but they've been asked since day one.  
2 Applying the *Duxbury* factors and then all of the other cases  
3 out of your courtroom, we don't think that there are any facts  
4 in dispute that would be relevant to the first-to-file rule.

5 THE COURT: Well, are you willing to concede the  
6 plaintiffs' point factually -- not legally, factually -- that  
7 there was a different, if you will, fraudulent pricing scheme?

8 MR. JACKSON: Judge, the pricing scheme hasn't  
9 changed, the alleged pricing scheme. It was one where the  
10 plaintiffs allege that Baxter gave inaccurate information to  
11 the pricing compendia. It was not AWP; it was a list price.  
12 But it's the same theory, you know, and we believe that the  
13 case law is very clear: The question is whether the  
14 disclosures made in the Ven-A-Care case were adequate to put  
15 the government on notice so they could investigate.

16 THE COURT: But are you willing to concede -- just I  
17 want to get to the historic facts, not necessarily the legal  
18 gloss that goes on them. Will you be willing to concede that  
19 factually there was a somewhat different pricing system; for  
20 example, list price versus AWP or some such differences that I  
21 think Sun/Hamilton is saying it was different? Are you willing  
22 to at least agree with there's a difference in the pricing, and  
23 you'll just say legally it doesn't make a difference?

24 MR. JACKSON: The information that was provided by  
25 Baxter to the pricing compendium was different than was done in

1 the past; the same process, same people, et cetera, et cetera.  
2 And, your Honor, it may be that we're able to enter into a  
3 stipulation. We actually proposed a stipulation to the  
4 relators regarding some facts that we think are not in dispute,  
5 and then we kind of got off track a little bit on the  
6 stipulation process. But the parties may be able to stipulate  
7 to the vast majority of the facts that you need to consider  
8 when addressing this first-to-file motion.

9 THE COURT: Okay.

10 MR. BREEN: Your Honor, may I speak to this? This is  
11 Breen for Ven-A-Care.

12 THE COURT: Sure.

13 MR. BREEN: Number one, I don't think there's going to  
14 be a big difference of information to your Honor based upon the  
15 evidence and the gut facts of this thing. I think the  
16 difference is going to be in what those facts mean or what the  
17 information means. And let me just be real specific. When  
18 Sun/Hamilton talks about this being two different drugs, Advate  
19 and Recombinate were the same drug. It's just that in the  
20 manufacturing process, they didn't use human or animal proteins  
21 when they manufactured Advate. So it was arguably, and from a  
22 marketing perspective, a safer drug that Baxter hoped to make  
23 more money on.

24 THE COURT: Wait a minute, sir. I didn't understand  
25 what you -- I didn't hear you. It used a different kind of

1 protein?

2 MR. BREEN: They didn't use the protein. They grew it  
3 using the same cell line, the same genetic makeup of these  
4 Chinese hamsters -- this is a biological product -- but they  
5 grew it in an environment that was void of human or animal  
6 protein, so it didn't inject the human or animal protein into  
7 the manufacturing process. So it's the same thing as  
8 Recombinate minus the human and animal protein.

9 THE COURT: Well, that might be a big thing or not. I  
10 mean, so is everyone agreeing that that's not a big material  
11 difference?

12 MR. BREEN: It's not a distinction with a difference  
13 for a first-to-file purposes because it was manufactured -- it  
14 was marketed by the same people, administered the same way to  
15 the same physicians, the same providers. All the factors that  
16 were discussed in the *Abbott* case were identical between  
17 Recombinate and Advate, except that Baxter marketed Advate for  
18 more money. They were trying to make more money on it. It  
19 came online literally -- I think the undisputed evidence shows  
20 that Baxter began the marketing process within about four days  
21 internally pricing this thing, within about four days of  
22 Ven-A-Care's last amended complaint. So I don't think we're  
23 going to have a difference of what the information is. It's  
24 just that I think that Sun/Hamilton may argue that the  
25 difference between Advate and Recombinate is material from a

1 first-to-file perspective, or as Ven-A-Care and Baxter does not  
2 believe it is. And I think you'll find the same thing with  
3 respect to the other part of this, which is the pricing, which  
4 I can also speak to when you're ready.

5 THE COURT: Well, let me just say this: From  
6 Ven-A-Care's point of view, are there any factual disputes in  
7 terms of credibility of Mr. Hamilton or any historic fact  
8 disputes that I would have to resolve?

9 MR. BREEN: I don't believe there is so long as the  
10 information they try to put forth for Mr. Hamilton is otherwise  
11 admissible and would not be inadmissible hearsay, and the  
12 devil's in the details there. Based upon what we heard at  
13 Mr. Hamilton's deposition which was taken, and from what  
14 Mr. Chizewer said now and during our preparation periods, I  
15 think that what they're saying is that at some point around  
16 2001 or 2002, Baxter began to give First DataBank a list price,  
17 which First DataBank used as a WAC and marked up to get to AWP.  
18 When you look at the Ven-A-Care complaint, we explain, and we  
19 had explained since 1995, the drug companies give a variety of  
20 prices to First DataBank, WAC being one of them -- we also  
21 mention list -- gets marked up to get to AWP. And the false  
22 pricing scheme is reporting inflated prices to First DataBank  
23 that the drug company knows will be used to report an inflated  
24 AWP. And that's exactly what they're saying occurred. That's  
25 exactly what Ven-A-Care pled. Their argument is that since

1     Baxter internally may have in its discussions with First  
2     DataBank emphasized a list price to call it a WAC, that that  
3     somehow is a distinction with a difference from a first-to-file  
4     perspective. We don't believe that it is.

5             THE COURT: All right, so let me just ask everybody,  
6     is the U.S. government going to be filing a brief, since the  
7     schedule doesn't seem to anticipate that?

8             MR. BREEN: They've indicated to me, your Honor, that  
9     I don't believe they are, from what I've heard from them.

10            THE COURT: Okay. So right now I don't remember,  
11     thinking about subject matter jurisdiction cases, whether I  
12     just simply rely on the evidence that Sun/Hamilton puts forth,  
13     to find that there's enough that they put forth to support  
14     jurisdiction, or whether I need to find each fact by a  
15     preponderance of the evidence. I think it's the latter. In  
16     other words, I think they've got to prove it with admissible  
17     evidence; but if they put forward enough, it doesn't matter  
18     that it's disputed.

19            MR. BREEN: Well, your Honor, that may be the case in  
20     terms of a typical 12(b)(1) subject matter jurisdiction, but  
21     remember the *Duxbury* case, the First Circuit looked only at the  
22     pleadings, and said that while the court can review evidence  
23     outside the pleadings in a subject matter jurisdiction case, it  
24     opted not to in that particular instance. It didn't say you  
25     can't, but it opted not to in that particular instance. And

1     this first-to-file argument is being made as a precursor to a  
2     Rule 60 motion. I mean, we're not trying the case here.  
3     They're trying to show standing to set aside the  
4     Ven-A-Care/Baxter settlement. So, I mean, there's a little bit  
5     more going on here than your typical first-to-file/subject  
6     matter jurisdiction scenario.

7             THE COURT: Will the credibility of Mr. Hamilton be  
8     attacked at all by the defendants?

9             MR. BREEN: Your Honor, I couldn't hear that. This is  
10    Breen.

11            THE COURT: Would the credibility of Mr. Hamilton be  
12    attacked at all by the defendants; in other words, whether he's  
13    telling the truth?

14            MR. JACKSON: Your Honor, this is Andy Jackson for  
15    Baxter. I guess the answer to that is "yes."

16            THE COURT: Well, then how do I not see him?

17            MR. JACKSON: Well, I think the question is, what  
18    evidence is relevant to your decision on first to file?

19            THE COURT: I know, but you're asking me -- this is  
20    what we were supposed to do today. I have two full days  
21    blocked off. That's a big deal in my schedule, two full days,  
22    and I get a motion two days ago to cancel. That's huge for me.  
23    And what I'm not going to do is do that again. So at this  
24    point I'm trying to figure out whether or not I need -- is  
25    Mr. Hamilton the only witness?

1           MR. BREEN: Your Honor, Ven-A-Care will present at  
2     least one witness, probably Dr. Lockwood.

3           THE COURT: So just understand, I'm not going to take  
4     a gazillion pages of briefing and then hold an evidentiary  
5     hearing. So at the end of the day, I think that if you're  
6     planning on challenging the credibility of Mr. Hamilton, I need  
7     to see him. If you're saying, even taking everything that he  
8     says, it's not enough to support subject matter jurisdiction,  
9     I'm happy to do it on the papers.

10          MR. JACKSON: Your Honor, I guess that depends on what  
11     he's trying to testify to.

12          THE COURT: Well, you know that because you've got a  
13     deposition. So, I mean, basically I'm putting this in  
14     defendants' court. If you want to challenge his credibility, I  
15     can't do it on a paper record.

16          MR. JACKSON: Well, then, your Honor, if that's the  
17     case, then I guess he's going to have to go on the stand and at  
18     least be subject to cross.

19          THE COURT: Okay, that resolves that issue. So is he  
20     available tomorrow, since I have the entire day blocked off?

21          MR. CHIZEWER: Unfortunately, your Honor, he's not.

22          THE COURT: Well, you know, I don't even care if I do  
23     him on video conferencing. Where does he live?

24          MR. CHIZEWER: He lives in Chicago, in the Chicago  
25     area, and he has -- I did receive an e-mail from him this

1 morning saying that he's barely been walking since he had his  
2 procedure at the end of last week.

3 THE COURT: There was no reason -- why did you wait so  
4 long to tell me?

5 MR. CHIZEWER: Your Honor, I apologize for that, and I  
6 hated to file that motion. I actually -- the parties engaged  
7 in a lot of discovery. We thought that there was a way to do  
8 this without the evidentiary hearing. My understanding was  
9 that Baxter was not even planning to present any live witness  
10 at all, and also, since we last saw you, your Honor,  
11 unfortunately his son passed away quite suddenly.

12 THE COURT: No, I'm sorry about that, but how about --

13 MR. CHIZEWER: But to the extent your Honor was going  
14 to deny that motion, we were absolutely ready and had even  
15 exchanged, you know, disclosures of witnesses and documents to  
16 prepare for that evidentiary hearing. And I did know that  
17 Mr. Hamilton had some back issues, but I didn't realize it had  
18 gotten so bad that he had to go in for this procedure at the  
19 end of last week.

20 THE COURT: Well, how about the 26th?

21 MR. CHIZEWER: Your Honor, this is Richard Chizewer.  
22 I think I mentioned in open court in November, I've had a  
23 long-scheduled family vacation, plus it's the Jewish holiday of  
24 Passover this coming week, so we would be --

25 THE COURT: How about Wednesday?



1 THE CLERK: The 20th, this Wednesday.

2 THE COURT: Will he be better?

3 MR. CHIZEWER: Unfortunately, my vacation is from  
4 Wednesday through the following week, so if there's any way to  
5 push it into April, your Honor.

6 THE COURT: All right, well, let's look at the first  
7 week in April.

8 THE CLERK: We can do it Monday, April 1 at 9:00  
9 o'clock.

10 THE COURT: How about April 1?

11 THE CLERK: Monday, April 1, at 9:00 o'clock.

12 MR. BREEN: Your Honor, this is Breen. I'll have to  
13 reschedule my time that I planned away that same week, but I'll  
14 do it to get this thing done.

15 THE COURT: I didn't hear you. Are you on trial, or  
16 are you on vacation?

17 MR. BREEN: I said I will have to reschedule and  
18 cancel a family vacation that I have scheduled for the first  
19 week of April, but I'll do that to get this done. I think we  
20 need to get it done, and --

21 THE COURT: What about April 16?

22 MR. BREEN: -- I would like the Court to know the  
23 reason why we thought --

24 THE COURT: Excuse me. Hold on. What about April 16?

25 MR. BREEN: -- is because after talking to everybody,

1 it didn't sound to me like we were going to spend two days --

2 THE CLERK: Hold on one second. Hold on one second.

3 THE COURT: Mr. Breen, this is why I hate  
4 teleconferences. I was trying another date so I wouldn't have  
5 you lose your vacation. What about the week of April 15, 16?

6 THE CLERK: Not the 15th. That's Patriots Day.

7 THE COURT: Oh, the 15th is Patriots Day. What about  
8 the 16th, 17th, 18th?

9 MR. BREEN: That would be better, your Honor.

10 THE COURT: Does anybody have a problem?

11 MR. CHIZEWER: 16, 17, 18 is fine with us, I think,  
12 Judge. I'd like to check with our client, but I think that  
13 will be fine.

14 THE COURT: You know, at some --

15 MR. CHIZEWER: I don't believe, your Honor, we're  
16 going to need -- I can't imagine we're going to need more than  
17 a day.

18 THE COURT: Well, I'm going to try and do you the full  
19 day on the 16th, I think. Hello, did I lose someone? And I  
20 have to go to another hearing now. Right now it's scheduled  
21 for the 16th, 17th, 18th. And right now I don't know because  
22 I've got stuff scheduled in the afternoon, I can't figure  
23 out -- so at least the first day I think we're going to be able  
24 to do a full day and then otherwise not. And then you should  
25 continue with your briefing schedule that you've got plotted

1 out there because I'm not going to allow a major briefing  
2 afterwards because I need to finish this case. So why don't  
3 you -- when can you both give me your prehearing memos?

4 MR. CHIZEWER: Your Honor, a week before the hearing,  
5 your Honor?

6 THE COURT: Fine, April 9 both of you will give memos  
7 and findings of fact, limited to 20 pages a person. And that  
8 doesn't include motions to strike. And so what we should do  
9 is, each side will produce the affidavits of the witnesses that  
10 they're planning on introducing, and we'll only permit  
11 cross-examination. By the 9th I want the affidavits, or  
12 possibly the depositions, I suppose, of the person, and then  
13 we'll only allow cross-examination, and that way I'll be able  
14 to make credibility findings. Okay?

15 MR. BREEN: Your Honor, that sounds good. This is  
16 Breen again. I mean, I'm just going to throw this out there:  
17 One thing we can do, since we're going to be doing this  
18 declaration process anyway before the evidentiary hearing,  
19 which was not the case before, is, we could confer, and perhaps  
20 we can come up with a set of stipulated facts for your Honor.  
21 And if so, I would assume we should let your Honor know that as  
22 soon as possible.

23 THE COURT: Yes, because basically I have scarce time.  
24 So I've basically given you two days which are now completely  
25 wasted. So at this point it's going forward short of -- you

1 know, if you let me know in a week or so you can agree, that's  
2 one thing, but otherwise you're here. I need to finish this.

3 MR. BREEN: I understand, your Honor.

4 THE COURT: Okay? So we'll get affidavits from your  
5 witnesses and briefs on the 9th. Likely we'll go forward the  
6 16th, 17th, and 18th. Right now, count on a full day on the  
7 16th, but I think you're half days after that.

8 MR. CHIZEWER: Your Honor, this is Mr. Chizewer. I  
9 agree with Mr. Breen that I can't -- and I think Mr. Jackson  
10 said this too -- I can't imagine this going more than a half  
11 day or one full day at the most.

12 THE COURT: Fine, but just realize, if you want me to  
13 make credibility findings, I have to see the witnesses who you  
14 want me to find credible or not. So here we go for April. And  
15 no more last-minute motions or I'll impose sanctions because  
16 it's too expensive for the Court. All right? So I hope  
17 Mr. Hamilton is feeling better, and you'd better get to me soon  
18 if you want to cancel that time. All right?

19 MR. CHIZEWER: Thank you, Judge.

20 THE COURT: All right, thank you. All right, thank  
21 you. We'll move on to our criminal case which is waiting.  
22 Thank you.

23 (Adjourned, 10:38 a.m.)

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